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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of**

**Implementation of Section 309(j)  
of the Communications Act**

**Competitive Bidding**

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**PP Docket No. 93-253**

**U S WEST REPLY**

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**November 30, 1993**

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## **Summary of U S WEST's Reply**

U S WEST agrees with the views expressed by several commenters that the Commission should bifurcate this proceeding by first establishing competitive bidding rules for PCS. Such an approach will help ensure Commission compliance with Congressionally-imposed deadlines and will facilitate the rapid deployment of new PCS services. U S WEST also recommends that auction procedures for cellular unserved area applications be developed at the same time so that cellular service can be introduced as soon as possible to those rural areas currently without such service. Experience gained from the auctions conducted for these services will be of considerable value in crafting and refining competitive bidding methods for other services.

U S WEST believes that the Commission's decision-making in this proceeding should be driven by five objectives: adoption of a process that: (1) is simple and easy to administer; (2) minimizes costs to applicants and the Commission; (3) awards licenses to parties that value them most; (4) is open and fair; and (5) maximizes the market information available to all bidders. These objectives will best be achieved, most parties agree, by using open, oral ascending auctions and by eliminating combinatorial bidding arrangements in their entirety. The adoption of combinatorial bidding procedures will add unnecessary complications to the auction process that will cause substantial delay, invite legal challenges, and skew the bidding process itself.

The bidding procedures adopted by the Commission should not be driven by the desire to maximize revenues. Congress has clearly stated that the Commission may not consider revenue production in making allocation decisions. The Commission should likewise give little consideration to the "secondary" market and any profits derived from post-auction transfers. With the use of competitive bidding, post-auction transactions will no longer result in a windfall to the successful licensee.

U S WEST agrees with the overwhelming majority of commenters that "intermediate" microwave links should not be subjected to competitive bidding. The use of auctions for these facilities would be inconsistent with statutory directives and would undermine a successful frequency coordination process which has all but eliminated the filing of mutually exclusive applications in this service. U S WEST and all parties addressing the issue also oppose the use of competitive bidding for Basic Exchange Telephone Radio Service. BETRS, which is critical to the maintenance of universal service, should not be placed in jeopardy by requiring BETRS applicants to outbid paging applicants using the same spectrum, especially when paging operators have other large blocks of spectrum from which to choose.

Finally, U S WEST submits that the Commission should subject all unserved cellular area applications to the competitive bidding process, as it proposes to do. The Commission has no authority to use lotteries to process the vast majority of these applications because they were not accepted for filing prior to July 26, 1993, the deadline established by Congress. The relatively few remaining unserved area applications should also be subject to the bidding process for purposes of uniformity and in keeping with the Congressional finding that lotteries "have not served the public interest."

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U S WEST, Inc. submits this reply to the over 200 comments filed in response to the Notice of Proposed Rulemaking, FCC 93-455 (Oct. 12, 1993) ("Notice").<sup>1</sup>

As an initial matter, the Commission is to be commended for its efforts over the last three months in responding to the enactment of the Omnibus Budget Reconciliation Act of 1993.<sup>2</sup> This Act imposed very tight deadlines on the Commission's resolution of issues raised not only in this proceeding, but also in the related PCS and Regulatory Parity proceedings.<sup>3</sup> The matters addressed in each of these dockets are extremely broad in

<sup>1</sup>The identity of the commenters, and the abbreviations used in this Reply, are listed in Attachment A. U S WEST will not address in this Reply arguments that are appropriately considered only in a reconsideration petition of the Second PCS Order, note 3 *infra*. See, e.g., CSI at 3 (MTA licensee should not own a BTA license within the MTA); GCI at 9-11 (block A should be set-aside as a "nondominant" block); MCI at 4-6 (cellular companies should be precluded from acquiring a 30 MHz block even outside its service area); RLV at 10 (increase size of C and D blocks); Unique at 2 and 4 (same).

<sup>2</sup>Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (Aug. 10, 1993) ("Budget Act").

<sup>3</sup>See PCS Second Report and Order, GEN Docket No. 90-314, FCC 93-451 (Oct. 22, 1993); Regulatory Parity Rulemaking, GN Docket No. 93-252, FCC 93-454 (Oct. 8, 1993).

scope and are of critical significance to American consumers and American competitiveness in the global economy. The Commission's expedited treatment of these complex and far-reaching issues has been comprehensive and thought-provoking. U S WEST is confident that, based upon this track record, the Commission will follow the same path in moving forward to resolve the important issues which remain.

**I. The Commission Should Bifurcate this Proceeding,  
Separating PCS and Unserved Cellular Area Issues  
from Non-PCS Issues**

Several commenters have recommended that the Commission bifurcate this monumental and expansive rulemaking by separating the PCS issues from the non-PCS issues and establishing competitive bidding rules for PCS first.<sup>4</sup> U S WEST agrees, but recommends that the Commission also consider adopting competitive bidding rules for unserved cellular areas at the same time. Both PCS and unserved cellular areas involve initial applications for new service. With respect to unserved areas, many rural communities will be receiving cellular service for the first time, and the unserved cellular applications, which have been pending since May, are positioned to be awarded by competitive bidding with administrative ease. Accordingly, competitive bidding for unserved cellular area frequencies should be undertaken as soon as practicable.<sup>5</sup>

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<sup>4</sup>See, e.g., NTCA at 14-18; RMTA/WRTA at 29-30.

<sup>5</sup>Additionally, this experience will be of considerable value in crafting and refining competitive bidding methods for other services.

Congress has established aggressive deadlines for auctioning PCS licenses only, legislating that "final" PCS rules must be completed by February 7, 1994, and that the Commission "shall . . . commence issuing licenses and permits in the personal communications service" by May 7, 1994.<sup>6</sup> The Commission's finite resources are, therefore, better spent by focusing near-term efforts on PCS licensing to ensure not only that it meets the statutory deadline, but also that it adopts PCS rules which are workable and meaningfully discharge Congress' intent. Moreover, because PCS rules borrow heavily from the Part 22 rules applicable to cellular unserved area applications, and because the two services will be competing with each other, it can be anticipated that the same auction rules would be workable for both types of services.

No purpose is served by attempting to decide precipitously, on an incomplete record, a set of competitive bidding rules for all radio-based services — especially given that auctions will have important ramifications on such services and given the lack of experience the industry and the Commission have with such bidding. A more judicious approach would be to allow the broadband PCS and unserved cellular area licenses to serve as a laboratory, enabling the Commission to use this experience in crafting and refining competitive bidding rules appropriate for other services.<sup>7</sup> Simply stated, prudence dictates taking one step at a time.

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<sup>6</sup>Budget Act § 6002(d)(1) and (2), 107 Stat. 396-97.

<sup>7</sup>In making this proposal, U S WEST does not mean to suggest that other radio services are less important. But the reality is that Congress has imposed scheduling deadlines on PCS spectrum only; the Commission has finite resources; most of the revenues generated by auctions will be received from the PCS spectrum (especially the broadband blocks); and competitive bidding for the broadband PCS blocks (and the MTA licenses in particular) will be the easiest to administer.

U S WEST acknowledges that the suggested bifurcated approach may delay the processing of mutually-exclusive applications for initial licenses for some existing services. This delay, however, will not likely lengthen, to any appreciable degree, the amount of time it currently takes to resolve mutual exclusivity issues. Moreover, the likelihood of mutually exclusive applications in many services will be minimal, given that licensees, for the most part, have been able to avoid mutual exclusivity through technical solutions, frequency coordination, and other settlement methods.<sup>8</sup> More importantly, given the Commission's and the industry's lack of experience with competitive bidding procedures, the immediate adoption of auction procedures for all services will create additional opportunities for litigation among mutually exclusive applicants, thereby causing further delay in the processing of the underlying applications.

## **II. Most Commenters Support Simplifying the Commission's Otherwise Sound Auction Proposal**

A sizable number of commenters expend considerable effort in proposing what they believe is the perfect competitive bidding process — one that maximizes the revenues available for the federal treasury and minimizes the transaction costs in the so-called "after" or "secondary" market.<sup>9</sup>

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<sup>8</sup>These opportunities are unavailable in the unserved cellular areas context, where the thousands of pending applications are mutually exclusive and cannot realistically be resolved through settlement efforts. Thus, absent auction authority, the provision of service to the remote areas of the country which do not currently have cellular service will be delayed further.

<sup>9</sup>Regrettably, there are also a sizable number of commenters who spend considerable effort in proposing a bidding process that enhances their respective private interests. Perhaps the most blatant example is MCI, which argues that one 30 MHz block should be "set-aside" so that it could bid, while its two chief interexchange carrier competitors and the eight largest local telephone companies would be precluded from doing so. In addition, MCI focuses exclusively on the advantages that current cellular carriers may have, but ignores com-

Continued on Next Page



While many of these comments are well intentioned, they ignore the central thrust of the new legislation: to ensure that the most viable PCS providers are in the market as quickly as possible. It bears emphasis that competitive bidding rules are not an end to themselves. Rather, they are a means to assign PCS spectrum to entities who likely value the spectrum most in a time frame such that they can deploy rapidly new technologies — all so consumers have the benefits of new services and new choices.

In this regard, it is indisputable that maximization of revenues for the federal treasury is not a central goal of the auction process. This is evident from Congress' directive that the Commission not consider revenues at all in making allocation decisions,<sup>10</sup> and in its declaration that, in using competitive bidding for assignment purposes, the objective is only to recover "a portion of the value of the public spectrum resource made available for commercial use."<sup>11</sup>

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pletely the advantages possessed by interexchange carriers, including a national brand name, existing distribution channels, and the ability to package long distance services with new wireless services. Finally, like many commenters, MCI supports its "set-aside" proposal with an "expert," although this "expert" is a former MCI employee.

<sup>10</sup>See Section 309(j)(7)(A) and (B), 107 Stat. 390.

<sup>11</sup>Section 309(j)(3)(B), 107 Stat. 388 (emphasis added). Importantly, the recovery of revenues is only one of four objectives of the new legislation, the other three objectives being "the development and rapid deployment of new technologies, products, and services for the benefit of the public," the "promoti[on of] economic opportunity and competition," and the "efficient and intensive use of the electromagnetic spectrum." Section 309(j)(3) (A), (B), and (D), 107 Stat. 388. Moreover, all four of these objectives are subsidiary to the "promoti[on of] the purposes specified in section 1 of [the Communications] Act (*id.*) — that is, "to make available, so far as possible, to all the people of the United States, a rapid, efficient, Nationwide, and worldwide wire and radio communications service with adequate facilities at reasonable charges." 47 U.S.C. § 151. From a public policy perspective, the public interest would be disserved if a bidder paid so much for a license that it was unable to build a viable system for use by the public or to invest in sufficient research and development to make new services and technologies available.

In fact, the public's interest may actually be better served if a successful bidder pays less than what it considers to be the full value for a PCS license — because more capital is then available to deploy a PCS system and to develop new technologies and services and because lower license acquisition costs will enable the PCS carrier to provide its services at a lower price.<sup>12</sup> In short, the interests of consumers in 1995 and beyond take precedence over the interests of taxpayers in 1994.

Likewise, the Commission should give little consideration to the "secondary" market and any profits derived from post-auction transfers. Experience has demonstrated that, between regulation and the market, the market is better equipped to determine the most efficient level of aggregation for mobile services — notwithstanding any costs associated with such transactions. The important point is that, with use of competitive bidding for initial PCS license assignments, post-auction transactions will no longer result in a windfall to the successful licensee, as was the case with lotteries. Post-auction transfers will instead be based largely upon the added value created by the successful bidder.<sup>13</sup>

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<sup>12</sup>This is precisely the advantage of oral auctions over the sealed nationwide combinatorial bidding process. As the Commission has pointed out, oral auctions ensure that a license will be assigned to the person who values the license most (because the person is willing to pay more than anyone else), yet the oral auction, unlike sealed bidding, is the equivalent of a second, sealed bid, thereby ensuring that the winner does not pay more than necessary to be successful. See Notice at 14 ¶ 37.

<sup>13</sup>See, e.g., U.S. Small Business Administration at 36 ("Any subsequent sale will simply reflect the market price paid at the auction plus any subsequent development of the system by the original licensee.").

U S WEST agrees that the Commission's decision-making in this proceeding should be driven by its three stated objectives: adoption of a process that

1. is "simple and easy to administer,"<sup>14</sup>
2. "minimize[s] costs to applicants and the Commission,"<sup>15</sup> and
3. most likely "awards licenses to the eligible parties that value them the most."<sup>16</sup>

U S WEST would propose the inclusion of two additional objectives to govern the Commission's deliberations: adoption of a process that (1) is open and perceived to be fair by the industry and the American public, both as taxpayers and as consumers of new mobile services, and (2) maximizes and, to the extent possible, equalizes market information to all prospective bidders (including designated entities).

The Commission has advanced a sound proposal in the Notice. The principal criticism of this proposal is that it is too complex and that, as a result, it would impose unnecessary costs upon the industry and the Commission alike and would delay needlessly the availability of new services to the American public. As demonstrated below, the Commission can best achieve its stated objectives by simplifying its proposal: retaining oral, as-

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<sup>14</sup>Notice at 6 ¶ 18.

<sup>15</sup>Ibid.

<sup>16</sup>Id. at 12 ¶ 34.

ending auctions, but abandoning sealed and combinatorial supplemental methods, at least for the initial rounds of competitive bidding.

**A. The Public Interest Unquestionably Is Served  
by Use of Open, Oral Ascending Auctions**

Most commenters support the Commission's tentative decision to use oral, ascending auctions as the "basic auction method," both generally and with respect to PCS specifically.<sup>17</sup> The comments confirm that, of all bidding methods discussed in the Notice, oral auctions have the four advantages identified by the Commission:

1. Oral auctions will assign a license to the party who values it most because the party with the greatest willingness to pay will ultimately outbid all other parties;<sup>18</sup>

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<sup>17</sup>See, e.g., APC at 1-2; AT&T at 11-12; BellSouth at 4-5; CCI at 1-6; CTIA at 7-9; CTP at 1-2; Comcast at 3-4; Council at 2; GTE at 5-6; Geotek at 10; McCaw at 5-6; NABER at 6-7; Nextel at 4-7; PageNet at 7-8; Rochester at 8-9; RCA at 5-7; SBC at 15-20; TDS at 6-7; Telmarc at 3; Telocator at 3-4; USIN at 8-9. A variant of oral auctions is electronic bidding. While this method is attractive in theory, it cannot realistically be adopted within the tight deadlines imposed by Congress, as even some advocates of electronic bidding acknowledge. See, e.g., Comcast at 3 (oral auctions should be used as a result). Electronic bidding raises a whole host of new issues, such as agreeing upon the software package to use, modifying that software to accommodate spectrum bidding, testing the software, developing adequate security systems, and establishing a backup system in the event of a failure. See, e.g., AT&T at 15 n.13. Only a handful of commenters support one of the other three basic auction methods. See CSI at 2 (sealed second bid); MCI at 8-9 (sealed second bid); Richard (sealed first bid).

<sup>18</sup>Notice at 14 ¶ 37 and 16 ¶ 46. See also CTIA at 7; Geotek at 10; McCaw at 6; NABER at 6; SBC at 16; Telocator at 3.

2. Oral auctions will facilitate the aggregation of licenses because a party willing to outbid all competitors can be assured of acquiring any license or group of licenses;<sup>19</sup>
3. Oral auctions reduce bidders' costs because, unlike sealed bid methods, bidders do not have to estimate the value that other bidders place on the license;<sup>20</sup> and
4. Oral auctions are fair to all involved because the process is totally open and because any qualified bidder willing to pay enough can be assured of winning.<sup>21</sup> The press could attend, and the auctions could be videotaped.<sup>22</sup>

These reasons alone warrant adoption of oral, ascending bidding as the "basic auction method." However, the commenters identify additional reasons favoring oral auctions over all other methods:

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<sup>19</sup>Notice at 14 ¶ 37 and 16 ¶ 46. *See also* AT&T at 12; CTIA at 7; McCaw at 6; PageNet at 14; SBC at 16.

<sup>20</sup>Notice at 14 ¶ 37. *See also* Comcast at 3; PageNet at 9-12; SBC at 16; TDS at 6; USIN at 8. Moreover, oral auctions are relatively simple for the Commission to administer, compared to electronic bidding, because elaborate software need not be modified and security systems developed.

<sup>21</sup>Notice at 14 ¶ 37. *See also* AT&T at 12; BellSouth at 4; CTIA at 7; Comcast at 3; McCaw at 6; Nextel at 5; PageNet at 14; SBC at 16; TDS at 6; USIN at 8.

<sup>22</sup>These steps could be valuable in defending the process from legal challenge and in discouraging collusive activity, the one supposed defect of the oral method. However, as other commenters have explained and documented, the Commission's concerns over collusion may be misplaced. *See, e.g.*, SBC at 19-20 (citing a Federal Reserve System report); PageNet at 15; CCI at 8 n.11.

- Open oral auctions are well known and understood and would, therefore, simplify the competitive bidding process.<sup>23</sup> The simpler the design of the auction, the more bidders can focus their attention on the more important decisional elements of the auction.
- Open oral auctions are also easy to administer and bidding can be implemented quickly — important considerations given the directive to begin PCS licensing in May.<sup>24</sup> By abandoning sealed (combinatorial) bidding, the Commission can avoid such issues as how to keep the bids secure prior to their opening, the establishment of minimum or reservation prices, and the establishment of a third “final” round of bidding.
- Unlike sealed bidding, open oral auctions also allow bidders to act upon the most currently available data in determining the amount they are willing to bid for particular licenses.<sup>25</sup> This consideration is especially important where, as here, there are few benchmarks for determining the value of PCS licenses (because the market is new). In addition, allowing all parties access to the same information will minimize any potential disadvantages faced by smaller bidders who may not have the resources of larger companies in preparing for the auctions.

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<sup>23</sup>See, e.g., AT&T at 12; CTIA at 7; Nextel at 4-5; SBC at 17.

<sup>24</sup>See, e.g., BellSouth at 4; McCaw at 6; SBC at 17.

<sup>25</sup>See, e.g., AT&T at 12; BellSouth at 5; CCI at 7; NYNEX at 16; PageNet at 11-12; SBC at 17; TDS at 6-7; USIN at 8.

- Bidders can better plan the use of limited capital by spending in any given auction only the amount actually necessary to outbid others (as opposed to sealed bidding where they must bid the amount they anticipate will be needed to win the auction).<sup>26</sup> As one commenter aptly observed, "[o]ral bidding gives bidders greater control over their own fate."<sup>27</sup>
- Open oral bidding allows bidders the greatest flexibility in responding to the immediate market conditions surrounding a particular auction.<sup>28</sup>

Only one commenter raises specific objections to oral auctions. According to this commenter, oral auctions may lead to "less vigorous competition" during the auction process because "oral auctions reveal the identity of the bidders."<sup>29</sup> However, this commenter cites no evidence that the auction process will be less competitive if the identity of bidders is revealed and, in fact, its larger affiliate takes just the opposite position.<sup>30</sup> Besides, even if there were such evidence, the public interest in an open process certainly

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<sup>26</sup>See, e.g., BellSouth at 5.

<sup>27</sup>AT&T at 13.

<sup>28</sup>See, e.g., *id.* at 12-13.

<sup>29</sup>PacTel Corp. at 2.

<sup>30</sup>See Pacific Bell at 12. According to Pacific Bell's experts, "it is desirable that the identities of at least the current two highest bidders be revealed" because "[r]evelation can enhance efficiency if the identity of a firm's competitors in a given market has an impact on its value of the license." Affidavit of Professors Milgrom and Wilson at 21 ¶ 56.

takes precedence over the possibility that additional revenues may be generated by concealing the identity of the bidders.

Compared to all other methods discussed in the Notice, oral auctions best meet the stated objectives of the Commission — and more. It is, therefore, entirely appropriate that the Commission adopt its proposal to use oral, ascending auctions as the “basic auction method.”

**B. The Public Interest Would be Disserved  
by Use of Combinatorial Bidding**

Most commenters, representing all facets of the industry, oppose use of nationwide combinatorial bidding in conjunction with oral auctions in assigning MTA licenses.<sup>31</sup> U S WEST must join in this opposition because, as one commenter aptly put it, “[t]he addition of sealed bids, like some potent ‘wonder drugs,’ creates side effects more severe than the initial symptoms.”<sup>32</sup>

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<sup>31</sup>See, e.g., APC at 2; AT&T at 4-8; Arch at 9-11; BellSouth at 6-11; CCI at 9-11; Comcast at 4-9; Cox at 5; GTE at 6-9; McCaw at 7-14; NABOB at 4-5; PacTel Corp. at 2-3; PageNet at 18-22; RCA at 9; SBC at 22-28; STCL at 7-11; Sprint at 4-7; TDS at 7-8; Telocator at 5-7; USIN at 10-12; U.S. Small Business Administration at 31-34. The discussion below, although focused on combinatorial bidding for MTA licenses, applies with equal force to combinatorial bidding for BTA licenses.

<sup>32</sup>CCI at 10. While U S WEST opposes combinatorial bidding, it does not oppose the right of a bidder to acquire through individual license auctions all of the licenses necessary to operate on a regional or nationwide basis. U S WEST opposes combinatorial bidding for the reasons stated below and because it believes that efficient aggregation is better accomplished by the market rather than by the design of the auction process itself. Indeed, even some of the proponents of combinatorial bidding concede that no combinatorial arrangement can replace the market completely and that, regardless of the specific combinatorial method actually used, post-auction transactions will be inevitable. See, e.g., CTIA at 11 n.24.



The commenters note a variety of problems with combinatorial bidding, including the fact that such bidding would appear to be inconsistent with the statutory objectives of competition and diverse ownership among licensees.<sup>33</sup> The competitive process would be hampered because all firms with cellular affiliates would be precluded from even submitting a national bid (because of the "in-region" eligibility restriction appropriately imposed on such firms);<sup>34</sup> and those that do submit such bids will likely not participate in the MTA-specific auctions (so as not to undercut their national bid).<sup>35</sup> In addition, MTA-only auctions could result in up to 102 different licensees, whereas only two firms will control the A and B blocks if nationwide bids are permitted and successful.

Combinatorial bidding will also likely cause significant delays in the introduction of PCS services in many parts of the country — even assuming PCS licenses are awarded expeditiously (*but see below*).<sup>36</sup> A nationwide PCS system would involve a network more than twice the size of that of the largest cellular carrier. Few firms have the capital, much less experienced personnel, to construct such massive networks simultaneously and ubiquitously throughout the country. As a result, the winner of a nationwide PCS

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<sup>33</sup>See, e.g., AT&T at 4-6; BellSouth at 6-7; GTE at 8; U.S. Small Business Administration at 32-33.

<sup>34</sup>While U S WEST believes that cellular carriers (and their affiliates) are appropriately excluded from acquiring any PCS licenses within their service area, there is no public policy reason for excluding cellular carriers from acquiring PCS licenses outside their service area.

<sup>35</sup>See, e.g., McCaw at 8-9; PageNet at 20 n.36.

<sup>36</sup>See, e.g., Comcast at 6-7; GTE at 8.

combinatorial bid would likely concentrate its resources on developing services in only a fraction of the country, leaving large areas undeveloped for a considerable period of time.<sup>37</sup>

There are, however, two especially compelling reasons which lead U S WEST to oppose combinatorial bidding. First, combinatorial bidding would create additional (and entirely unnecessary) complexity in the auction process — complexity that would almost certainly cause substantial delay and would invite legal challenge to the entire process.

With combinatorial bidding, no block A or B PCS licenses can be issued until all 102 MTA auctions are completed and the sealed bids opened. However, with combinatorial bidding, the Commission must then conduct a third round of bidding to ensure some fairness to the bidders participating in the individual MTA auctions, and this “final” round will consume considerable time because all the MTA winners in a given spectrum block must coordinate among themselves in submitting a counter offer. Thus, months will elapse between the commencement of the MTA auctions and the announcement of the winner (or winners).

But consider the circumstances at the close of this multi-stage process. There will be entities who were successful during some part of the process (*e.g.*, a successful bidder for one MTA license) but who will not receive the PCS license they had thought they had won and for which they

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<sup>37</sup>*See, e.g.*, AT&T at 4-5. U S WEST therefore agrees with most commenters addressing the issue that, if combinatorial bidding is used, the Commission should require the combinatorial bid winner to meet all applicable build-out requirements for each individual license awarded.

had made full auction payments. It is reasonable to assume that these successful (but not completely successful) firms will challenge the winning bidder's application through the petition to deny process — a process that could easily add yet another 10-12 months (and longer with court appeals).<sup>38</sup> Importantly, a challenge by anyone (*e.g.*, a winner of only one MTA) will likely delay assignment of all block A and block B licenses because, in using combinatorial bidding, the Commission will have necessarily tied together all licensees within a given spectrum block.

The Commission has recognized that “[u]nnecessary complexity in conception or execution is likely to cause delay and frustrate Congress’s intent to speed new services to the public.”<sup>39</sup> Combinatorial bidding would have this very undesirable effect.

U S WEST’s second concern is that combinatorial bidding jeopardizes considerably the likelihood of licenses being assigned to the firms which value them the most — a principle upon which almost everyone agrees.<sup>40</sup> This is possible (if not likely) because the highest bid in an oral MTA auc-

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<sup>38</sup>In addition, there are numerous commenters who contend that the Commission should entertain less than nationwide combinatorial bids. *See, e.g.*, Ameritech at 4-5; MCI at 7; Nextel at 9-11; NYNEX at 14. If the Commission accepts this invitation, it will add considerable complexity to the auction process. *See, e.g.*, Cox at 6; Sprint at 6. *See also* R. Preston McAfee, Auction Design for PCS at 12 (noting that “there are 2,251,799,685,247 possible sets of MTAs on which a firm could bid.”), appended to PacTel’s Comments. On the other hand, if the Commission declines this invitation, these parties may challenge this decision in court. Either result adds more delay in the award of broadband PCS licenses and, as a result, further delays the date that the public will enjoy new services and new competition. The safest course is to close the door altogether on combinatorial bids, rather than open it only half way.

<sup>39</sup>Notice at 6 ¶ 18.

<sup>40</sup>This defect is discussed most thoroughly in the comments filed by Pacific Bell (at 5-10) and the documents it attaches. *See also* PageNet at 19.

tion will almost always be less than the bidder's full value for the license (because, to prevail, it need pay only a small sum above the second-highest bid). Because each MTA winner does not pay what each considers to be the full value for its license, national bidders can prevail simply by bidding less than the sum of the highest values among MTA bidders. Specifically, national bidders need bid only a little more than the sum of the second-highest values among the MTA bidders.<sup>41</sup>

The net result is that a national license could very well be awarded to a bidder whose value and bid are less than the sum of the highest values of the bids for the MTA licenses — thereby undermining the consensus objective of awarding licenses to the firms which value them the most.<sup>42</sup> As one commenter correctly observed:

The consequence is that those bidders who might have been the most competitive at oral auctions will not participate. The parties who do win the oral auctions may lose the licenses they tentatively won to a higher combinatorial bid — because they did not have the chance, in the open auction, to respond on a market-by-market basis to the combinatorial bidders.<sup>43</sup>

This problem arises because the two approaches are fundamentally incompatible: oral auctions effectively use a second-highest value methodology, while sealed auctions use a highest-value methodology. Any effort to blend

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<sup>41</sup>The problem described above is aggravated because it is unlikely that firms submitting nationwide bids will participate in the MTA auctions — action that will likely decrease further the sum for which MTA licenses can be obtained and, thereby, decreasing the price for which a nationwide license can be obtained.

<sup>42</sup>This point is documented at pages 8-13 and Figures 1 and 2 in the Milgrom/Wilson affidavit, appended to the comments filed by Pacific Bell.

<sup>43</sup>McCaw at 8-9.

the two will create complexity, legal uncertainty, and delay — with no compensating benefits.

It is said that combinatorial bidding will facilitate the aggregation of licenses.<sup>44</sup> The reasons for this conclusion are not readily apparent because a bidder wanting to aggregate licenses included in a combinatorial auction can achieve the identical result in an oral auction — simply by submitting the highest bid in each MTA auction.<sup>45</sup> In fact, bidders interested in aggregation will have far more certainty in successfully achieving their objective with oral auctions compared to sealed bids (where success will instead be based on how well they anticipate the bids submitted by others).<sup>46</sup>

It is also said that combinatorial bidding allows bidders to express the interdependence of license values.<sup>47</sup> But, as other commenters explain, this “interdependent value” consideration is also present in sequential oral auctions because bidders can use the information acquired during an oral

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<sup>44</sup>It is noteworthy, however, that the commenters taking this position do not explain why they cannot aggregate by participating in all the individual MTA auctions. See Bell Atlantic at 4; CTIA at 10; NTCA at 13.

<sup>45</sup>See, e.g., BellSouth at 8-9.

<sup>46</sup>If anything, the combinatorial bidding proposed in the Notice favors one form of aggregation (i.e., national) at the expense of all other forms of regional aggregation which may be equally or more economically efficient. Such a result is obviously unintended, given the Commission's decision not to use nationwide licenses with broadband PCS and given the structure of the cellular industry (which has developed into regions rather than nationally).

<sup>47</sup>It is once again noteworthy that the commenters holding this position do not explain why the interdependence of license values is not reflected in the oral auctions as well. See Bell Atlantic at 4.

auction to re-evaluate, on a real-time basis, the total value they place on combinations of licenses.<sup>48</sup>

Finally, it is said that combinatorial bidding will increase the revenues available for the federal treasury because a national bid will be accepted only if it exceeds the sum of the highest MTA bids.<sup>49</sup> Even if revenue generation were a legitimate and important consideration,<sup>50</sup> it is doubtful that combinatorial bidding will increase revenues. This is because, as noted above, combinatorial bidders will not participate in the auctions of individual licenses, resulting in fewer bidders and most likely a lower MTA price. Thus, the national bid can also be successful with a lower price.<sup>51</sup>

In summary, combinatorial bidding for broadband PCS blocks should be rejected because it will not promote the goals of Congress or the Commission. Firms interested in aggregation can acquire all of the licenses they want simply by participating in individual MTA auctions. This latter method will achieve all of the statutory objectives, but will be less adminis-

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<sup>48</sup>See, e.g., SBC at 24. For example, if a bidder seeks to acquire several licenses and has won the first of several contiguous properties, the value that bidder will place on the next contiguous property may well increase to reflect the higher combined value of the two properties, and will be reflected in his bidding. Oral bidding can, therefore, adequately reflect the maximum value placed on individual and combined licensed areas while allowing the economic aggregation of markets.

<sup>49</sup>See CTIA at 12.

<sup>50</sup>The new statute requires the Commission to prescribe area designation and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas and prohibits the Commission from making its public interest determination regarding these area designations based on revenue. Section 309(j)(7), 107 Stat. 389, 390.

<sup>51</sup>See, e.g., BellSouth at 9 n.11.

tratively cumbersome than combinatorial bidding and will expedite the day when the public will finally enjoy the benefits of PCS services.

**C. The Milgrom/Wilson Proposal  
Deserves Serious Consideration**

While U S WEST supports oral, ascending auctions as the basic auction method, it also finds interesting the simultaneous repeated sealed-bid auction proposal suggested by Professors Milgrom and Wilson, recognized experts in auction design.<sup>52</sup>

Under this proposal, the auction would be conducted by collecting sealed bids daily for all the licenses being offered. Acceptable bids must exceed, by some minimum increment, the highest previously-posted bid for each license. The Commission would collect the new bids and publish daily the identities and bid amounts of the highest and second-highest bidders and the number of new bidders. Bids could not be withdrawn, and bidders would be required to be active every day or be precluded from further bidding.

While the Milgrom/Wilson proposal is interesting (seemingly having all the benefits of oral auctions without having to decide sequencing issues), there are several issues in need of further discussion. Among other things, the plan does not adequately address the interdependence of values consideration, the issue of license default,<sup>53</sup> and how auctions could end expedi-

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<sup>52</sup>The Commission cites one of Prof. Milgrom's publications in its Notice (at 15-16 nn. 28, 29 and 31). This proposal is contained in an attachment to Pacific Bell's comments.

<sup>53</sup>For example, awarding a license to the third-highest bidder, after the bidder has assumed that it lost the property, may result in that bidder over-extending itself.

tiously.<sup>54</sup> For these reasons, this simultaneous repeated sealed-bid proposal should not be adopted without further modifications to address adequately these concerns.

### **III. Miscellaneous Issues**

A. Bidding Sequence. U S WEST, like many other commenters addressing the issue,<sup>55</sup> supports the Commission's decision to "establish [a] sequence of bidding that is most likely to facilitate economically efficient aggregation of licenses across geographic regions and spectrum blocks."<sup>56</sup> Again like many commenters,<sup>57</sup> U S WEST supports the Commission's proposal that, "within each spectrum block [it] would auction the biggest markets first in both narrowband and broadband PCS."<sup>58</sup> The Commission is absolutely correct in observing:

Auction winners of licenses for large cities might well seek to cluster smaller markets around a large market "hub" in order to achieve economies of scale and scope. . . . [T]he cellular industry has generally developed in this manner, indicating that this may be an economical and efficient business strategy.<sup>59</sup>

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<sup>54</sup>Under the proposal, a bidder could draw out the auction process simply by making repeated but small bid increases, thereby delaying the entire process for an unreasonably long period of time.

<sup>55</sup>See, e.g., CTIA at 24-25; TDS at 8-10.

<sup>56</sup>Notice at 17 ¶ 52.

<sup>57</sup>See, e.g., Arch at 12; CTIA at 24-25; CTP at 5; McCaw at 15-16; Nextel at 8; PageNet at 17-18; RLV at 4; Telocator at 4; TDS at 8-10.

<sup>58</sup>Notice at 42 ¶ 125.

<sup>59</sup>Ibid.



Indeed, if smaller geographic markets are auctioned first, "it is possible that the smaller . . . markets . . . may not be assigned to the party that values them the most."<sup>60</sup>

Similarly, most commenters support the assignment of licenses one band at a time, beginning with the larger PCS spectrum blocks and ending with smaller spectrum blocks for the reasons again cited by the Commission:

[T]he value of a small market adjacent to a large market is more dependent (in percentage terms) on whether one also holds the large market than the converse. Thus, it would seem more useful to most bidders to know which big markets they had won before bidding on smaller markets.<sup>61</sup>

U S WEST submits that these procedures should be followed except for one modification to account for important practical considerations. Specifically, U S WEST proposes that the designated entity blocks (C and D) be auctioned last, after the two MTA blocks (A and B) and after the three 10 MHz blocks (E, F, and G). As the U.S. Small Business Administration notes, deferring bidding of the designated entity blocks will benefit such entities because they will have access to more information:

If the Commission wishes to conduct the PCS auction on an expedited basis, then the Commission should consider delaying any auction reserved for designated entities until after the general auction has taken place. This will not only provide designated entities with more time to prepare their bids but will give them a better sense of the PCS marketplace.<sup>62</sup>

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<sup>60</sup>CTIA at 25 citing OPP Spectrum Auction Study at 23-24.

<sup>61</sup>Notice at 18 ¶ 53. See also CTP at 5; GTE at 6; SBC at 35; McCaw at 15; RLV at 4.

<sup>62</sup>SBA at 40. See also TDS at 9. There are other reasons supporting deferral of the auction for the designated entity blocks. For example, these blocks will likely be the most complicated to auction because bidders will likely propose a wide variety of royalty and

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